

## **REMARKS**

Applicant is in receipt of the Office Action mailed February 6, 2004. Claims 5, 11, 34, 37, 41, and 44 have been cancelled. Claims 1, 6, 7, 30, 35, and 38 have been amended to clarify the claimed invention. New claims 45-56 have been added. Claims 1-4, 7-10, 12-33, 35-36, 38-40, and 42-43, and 45-56 remain pending in the case. Further consideration of the present case is respectfully requested in light of the following remarks.

### **Section 102 Rejections**

Claims 1-4, 11-18, 20-25, 30-33, 37-40, and 44 were rejected under 35 U.S.C. 102(e) as being anticipated by McDonald et al. "McDonald", USP 5,966,532. Claims 11, 37, and 44 have been cancelled, and so their rejection is rendered moot.

As the Examiner is certainly aware, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claim 1 recites:

1. A method for programmatically generating a second graphical program based on a first graphical program, the method comprising:

receiving information specifying the first graphical program, wherein the first graphical program includes a first plurality of interconnected nodes which perform a first functionality, and wherein the first graphical program is associated with a first programming development environment; and

programmatically generating the second graphical program based on the information, wherein the second graphical program implements functionality of the first graphical program, wherein the second graphical program includes a second plurality of interconnected nodes which perform the first functionality,

wherein the second graphical program is associated with a second programming development environment, and wherein the second programming development environment is different from the first programming development environment.

Regarding claims 1, 30, and 38, the Office Action asserts that McDonald teaches a method for programmatically generating a second graphical program based on a first graphical program comprising receiving information specifying the first graphical program, citing col. 4, lines 11-12, programmatically generating the second graphical program based on the information and the second graphical program implements functionality of the first graphical program, citing col. 4, lines 3-9.

Applicant respectfully disagrees, and has further amended the independent claims to emphasize the distinctions over McDonald.

Column 4, lines 11-12 of McDonald recites:

“...the user first selects a control which represents input to or output from a graphical program.”

Column 4, lines 3-9 recites:

“The graphical programming system executing on the computer system also includes a plurality of front panel objects or controls which represent or indicate input to or output from a graphical program, or represent devices in the graphical program. At least a subset of the controls, e.g., a first plurality of the controls, each include one or more associated graphical code portions or templates.”

Column 5, lines 1-12 recites:

“The graphical code generation wizard then configures the graphical code portion with the one or more parameter values to produce a configured graphical code portion. The graphical code generation wizard inserts the parameter values selected or configured by the user into the graphical code portion or template. In the graphical programming system of the preferred embodiment, the user creates the graphical program in a graphical program panel, referred to as a block diagram window. In this embodiment, the graphical code generation wizard operates to copy the configured graphical code portion or template into the block diagram window where the graphical program is being created”

Applicant respectfully submits that McDonald neither teaches nor suggests “receiving information specifying the first graphical program, wherein the first graphical program includes a first plurality of interconnected nodes which perform a first functionality, and *wherein the first graphical program is associated with a first programming development environment*; and programmatically generating the second graphical program based on the information, wherein the second graphical program implements functionality of the first graphical program, wherein the second graphical program includes a second plurality of interconnected nodes which perform the first functionality, *wherein the second graphical program is associated with a second programming development environment, and wherein the second programming development environment is different from the first programming development environment.*”

Rather, McDonald teaches a graphical program, user selection of (user interface) controls, and programmatic inclusion in the graphical program of pre-developed portions of graphical code corresponding to the controls. In other words, the graphical program is augmented with code for operation of the selected control. Applicant notes that both the graphical program and the code for operation of the selected control are associated with the same graphical programming environment (e.g., LabVIEW). Thus, there is no second graphical program that is programmatically generated based on information specifying the (first) graphical program, where the first and second graphical programs are each associated with a different graphical programming environment.

Column 4, lines 43-45 of McDonald recites:

“...the wizard displays on the screen a configuration panel or dialog, prompting the user to configure the control or object.”

Moreover, as McDonald also states in column 4, lines 54-56:

“The graphical code generation wizard selects a graphical code portion in response to the control, wherein the selected graphical code portion corresponds to the control.”

Finally, in column 5, lines 8-12. McDonald states:

“...the graphical code generation wizard operates to copy the configured graphical code portion or template into the block diagram window where the graphical program is being created.”

Thus, as argued in the previous Response, McDonald teaches selection and configuration of controls, and graphical code portions or templates based on the user input being programmatically included in or copied to a graphical program or block diagram. In other words, the graphical program or graphical program portion is generated or assembled from selected pre-existing controls and graphical code portions or templates, and is specifically not a second graphical program generated based on received information specifying a first graphical program, where the first and second graphical programs are each associated with a different graphical programming environment.

Applicant further submits that McDonald actually teaches away from Applicant's invention as claimed. For example, claim 1 does not include numerous features present in the system of McDonald. For example, neither the user selection of an interface control, nor the programmatic selection of a code template based on the user selected control is a feature of Applicant's invention as represented in claims 1, 30, and 38.

Thus, for at least the reasons presented above, Applicant respectfully submits that McDonald neither teaches nor suggests all of the features of amended claims 1, 30, and 38, and so, for at least the reasons given above, Applicant submits that claims 1, 30, and 38, and claims respectively dependent thereon, are patentably distinct over McDonald, and are thus allowable.

Removal of the 102 rejection of claims 1-4, 12-18, 20-25, 30-33, and 38-40 is respectfully requested.

Applicant further submits that new independent claim 48 includes similar limitations as claim 1, and so claim 48 is similarly patentably distinct over McDonald, and is thus allowable for at least the reasons presented above.

Applicant respectfully submits that new independent claims 49 and 53 also distinguish over McDonald in that McDonald neither teaches nor suggests that the first and second graphical programs are in different graphical programming languages (claim

49), nor that the first and second graphical programs have different data flow semantics (claim 50). Thus, Applicant respectfully submits that claims 49 and 53, and those claims dependent thereon, are patentably distinct over the cited art, and are thus allowable for at least the reasons provided above.

### **Section 103 Rejections**

Claims 5-10, 26-29, 34-36, and 41-43 were rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald and Sojoodi et al (“Sojoodi”, USP 6,437,805).

As held by the U.S. Court of Appeals for the Federal Circuit in *Ecolochem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular . . . . Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

Applicant submits that neither Sojoodi nor McDonald provides a motivation to combine, and that even if the references were combinable, which Applicant argues they are not, the resulting combination would not produce Applicant’s invention as claimed. In fact, both Sojoodi and McDonald teach away from Applicant’s invention as claimed.

Sojoodi teaches *manual* creation of a graphical program via inclusion of an object node in the graphical program in response to user input, where the graphical program is then operable to access capabilities of an object via the object node (Abstract, column 5, lines 28-32), and not only does not describe *programmatically* creating a graphical program, but more specifically does not describe *programmatically creating a second graphical program based on information specifying a first graphical program*.

Moreover, Sojoodi further fails to teach or suggest the limitations “*wherein the first graphical program is associated with a first programming development environment*” and “*wherein the second graphical program is associated with a second programming development environment, and wherein the second programming development environment is different from the first programming development environment.*”

Thus, Sojoodi neither teaches nor suggests the limitations of claim 1 (or claims 30 and 38). Nor does Sojoodi in combination with McDonald teach or suggest these limitations, and so Sojoodi fails to correct the deficiencies of McDonald. Applicant thus respectfully suggests that since claims 6-10, 26-29; 35-36; and 42-43 are respectively dependent from independent claims 1, 30, and 38, which were shown above to be patentably distinct over McDonald, claims 6-10, 26-29; 35-36; and 42-43 are patentably distinct over McDonald and Sojoodi, for at least the reasons given above.

Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald and Kadtke et al (“Kadtke”, USP 6,401,057). Applicant respectfully disagrees.

The Examiner has merely pointed out that Kadtke implemented a prototype simulating the operation of an analog circuit device using the Simulink package. Nowhere does Kadtke (or McDonald) teach or suggest combining the Simulink package (or any other graphical programming environment different from LabVIEW) with the system of McDonald to produce Applicant’s invention. Applicant submits that even if the Kadtke’s use of the Simulink package is combined with the system of McDonald, the combination would not produce all of the features of independent claims 1, 30, and 38, and so Kadtke fails to overcome the deficiencies of McDonald. Thus, Applicant respectfully suggests that since claim 19 is dependent from independent claim 1, which was shown above to be patentably distinct over McDonald, claim 19 is patentably distinct over McDonald and Kadtke, for at least the reasons given above.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.



CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-48000/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Request for Continued Examination

**RECEIVED**

MAY 11 2004

Technology Center 2100

Respectfully submitted,

\_\_\_\_\_  
Jeffrey C. Hood  
Reg. No. 35,198  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8800  
Date: 5/5/2004